

Wells Fargo Bank N.A. v Prass

2025 NY Slip Op 31468(U)

April 21, 2025

Supreme Court, Kings County

Docket Number: Index No. 509046/2023

Judge: Carolyn Mazzu Genovesi

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At an IAS Part FRP-5 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the day of 202 .

APR 21 2025

Present: Hon. Carolyn Mazzu Genovesi

WELLS FARGO BANK N.A., AS TRUSTEE, FOR CARRINGTON MORTGAGE LOAN TRUST, SERIES 2006-NC5 ASSET-BACKED PASS-THROUGH CERTIFICATES,

Plaintiff,

DECISION AND ORDER

against-

Index No.: 509046/2023

Mot. Seq. 1 & 2

GLADSTONE PRASS AKA GLADSTONE F. PRASS AKA GLADSTONE F. PRASS, JR., THE BANK OF NEW YORK TRUSTEE UNDER THE POOLING AND SERVICING AGREEMENT SERIES 1996 C. AT 101 BARCLAY STREET NEW YORK, NY 10286 CORP. TRUST – MBS, NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE, CITY OF NEW YORK ENVIRONMENTAL CONTROL BOARD, JOHN DOE,

Defendants,

The following papers were read on this motion pursuant to CPLR 2219(a):

Papers	NYCEF Numbered
Motion (MS # 1) Memorandum of Law, Affirmation in Support Exhibits	<u>72-89</u>
Cross-Motion (MS #2) Affirmation in Support and in Opposition of Motion, Exhibits	<u>93-96</u>
Affirmation in Opposition to Cross-Motion	<u>100</u>

In an action to foreclose a mortgage, Wells Fargo Bank N.A., as Trustee, for Carrington Mortgage Loan Trust, Series 2006-NC5 Asset-Backed Pass-Through Certificates (“plaintiff”) moves for summary judgment, to dismiss the Answer and affirmative defenses asserted against it, to appoint a referee to compute the amount due and whether the subject property may be sold in

parcels, to amend the caption to name certain tenants, and to declare all non-appearing defendants in default (MS #1). Gladstone Prass (“defendant”) cross-moves to dismiss the Complaint on the basis that plaintiff failed to comply with RPAPL 1306 and 1304.

Defendant cross-moves to dismiss the complaint, alleging that plaintiff did not comply with RPAPL 1306. Specifically, defendant contends that since the RPAPL 1306 notice plaintiff filed indicates there was no loan modification, when in fact the loan had been modified, and therefore the filing in question is defective. However, the Appellate Division, Second Department has held “[t]he plaintiff’s failure to indicate that the loan was modified does not render the filing insufficient to satisfy the requirements of RPAPL 1306.” *U.S. Bank National Association v. Adams*, 202 A.D.3d 867, 870 (2d Dep’t 2022). Accordingly, defendant’s contention that plaintiff failed to comply with RPAPL is without merit.

Defendant further cross-moves to dismiss on the basis that the RPAPL 1304 notice defendant received is defective. “RPAPL 1304 requires that at least 90 days before a lender, an assignee, or a mortgage loan servicer commences an action to foreclose the mortgage on a home loan as defined in the statute, such lender, assignee, or mortgage loan servicer must give notice to the borrower.” *Wells Fargo Bank, N.A. v. Yapkovitz*, 199 A.D.3d 126, 131 (2d Dep’t 2021) quoting *Bank of N.Y. Mellon v. Porfert*, 187 A.D.3d 1110, 1111–1112 (2d Dep’t 2020). “Strict compliance with RPAPL 1304 notice to the borrower or borrowers is a condition precedent to the commencement of a foreclosure action.” *Wells Fargo Financial Credit Services New York, Inc. v. Mammen*, 191 A.D.3d 737, 739 (2d Dep’t 2021) quoting *Citibank, N.A. v Conti-Scheurer*, 172 A.D.3d 17, 20 (2d Dep’t 2019). “The plaintiff’s failure to show strict compliance [with RPAPL 1304] requires dismissal.” *Aurora Loan Services, LLC v. Weisblum*, 85 A.D.3d 95, 103 (2d Dep’t 2011); see *Deutsche Bank National Trust Company v. Zatari*, 220 A.D.3d 1151, 1152–1153 (3d

Dep't 2023). The legislative purpose of RPAPL 1304 is to ensure notice to borrowers of an impending foreclosure action and avoid litigation. *Wells Fargo Bank, N.A. v. Yapkowitz*, 199 A.D.3d 126, 135 (2d Dep't 2021).

Defendant alleges that plaintiff failed to comply with RPAPL on three grounds. First, defendant alleges that the entity that sent the RPAPL notice, iMailTracking, LLC, was not authorized to do so. However, in the instant case, plaintiff submitted an affidavit of Charlene Broussard, who attests that iMailtracking, LLC was retained by plaintiff's counsel and who mailed the RPAPL 1304 notice herself. "[A]n affidavit from someone with personal knowledge that the mailing of the RPAPL 1304 notice actually happened" is sufficient to establish strict compliance with the statute." *U.S. Bank, N.A. v. Maiorino*, 219 A.D.3d 538, 540 (2d Dep't 2023).

Second, defendant alleges that the RPAPL 1304 notice defendant received is defective because the website address (URL) listed for the Department of Financial Services does not link to the proper webpage. The Court has examined the URL in question and finds that while it does not link to the appropriate webpage, the link forwards a user to a website from the Department of Financial Services, which states "We're sorry, the page the page that you are looking for is not found." The broken link is apparently caused by the plaintiff using spaces instead of underscores in the URL. The Court was unable to find any binding authority on whether a mistake in the URL renders an RPAPL 1304 notice defective. However, in *Citimortgage, Inc. v. Bunger*, 66 N.Y.S.3d 788, 795 (Sup. Ct. Suffolk County, 2017), Justice Robert F. Quinlin found that where a plaintiff printed an outdated URL on a RPAPL 1304 notice did not render the notice defective.¹ In the case at bar, the alleged defect in the RPAPL 1304 notice is less significant than that in *Bunger*; spaces

¹ The Court is aware of *Federal National Mortgage Association v. Williams-Jones*, 235 A.D.3d 953, 955 (2d Dep't 2025), where the Second Department held omitting the appropriate Department's phone number rendered a RPAPL 1304 notice inoperative. However, the instant case is distinguishable, as a URL that diverged slightly from the correct link was provided.

(which are never used in URLs) are used in place of underscores. Accordingly, this Court adopts the rationale of the *Bunger* Court and finds the URL issue insignificant.

Third, defendant contends that the RPAPL 1304 notice is defective, because the default date it lists is inaccurate. The Court finds this argument availing. Pursuant to RPAPL 1304(1), the notice must state “[a]s of ___, your home loan is ___ days and ___ dollars in default. Under New York State Law, we are required to send you this notice to inform you that you are at risk of losing your home.” Here, the RPAPL 1304 notice reads in relevant part “[a]s of October 185, 2022, your home loan is 1813 days and \$244,647.50 dollars in default.” October 185, 2022 cannot be the date of default, as it is not a real date. An RPAPL 1304 notice with factual inaccuracies is considered defective and does not strictly comply with the statute. *See Sparta GP Holding Reo Corp. v. Lynch*, 186 A.D.3d 894, 896 (2d Dep’t 2020); *Hudson City Sav. Bank v. DePasquale*, 113 A.D.3d 595, 596 (2d Dep’t 2014). The Court takes notice that the error in the date is a clear typographical error. Under CPLR 2001, “the court may permit a mistake, omission, defect or irregularity... to be corrected, upon such terms as may be just, or, if a substantial right of a party is not prejudiced.” However, in the present case, defendant was prejudiced by the mistaken date. Under RPAPL 1304, defendant is entitled to have notice of the date of default. Upon review of the record, the Court finds that based on the documents sent to defendant, defendant would be unable to determine whether the date of his default in paying the loan was October 15, 2022, October 18, 2022 or some other date. Since plaintiff failed to comply with the condition precedent of RPAPL 1304, the complaint must be dismissed.

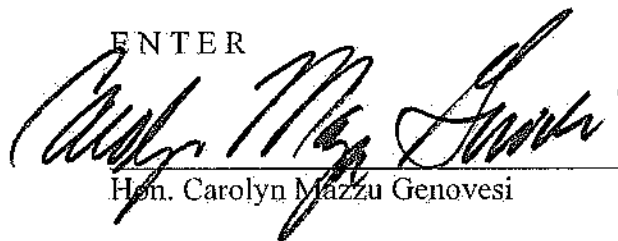
In light of the Court’s ruling on the cross-motion to dismiss, the Court need not entertain plaintiff’s motion for summary judgment. For the foregoing reasons, it is hereby

ORDERED that plaintiff's motion for summary judgment is DENIED (MS #1); and it is further

ORDERED that defendant's cross-motion is GRANTED (MS #2) and the complaint is DISMISSED.

This constitutes the Decision and Order of the Court.

ENTER



Hon. Carolyn Mazza Genovesi